

**The Appeals of Trade:  
The Making of an Old GATT Hand**

**Address  
by  
James Bacchus  
Chairman  
Appellate Body  
World Trade Organization  
Geneva, Switzerland  
to the  
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*“Why are they doing it?”*

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This question has been asked by one of the many critics of the World Trade Organization, a Canadian writer named Naomi Klein. Her question deserves an answer. So, today, I will try my best to answer it.

Writing a few weeks after the tragedy of September 11, 2001, and a few days before the WTO ministerial conference in Doha that “launched” a new “round” of global trade negotiations, Ms. Klein wondered in print what it was that made so many American and other international trade negotiators willing to fly to the very middle of the Middle East at that dangerous time.<sup>1</sup> Watching from afar, she tried to comprehend this. In the reputable pages of the Toronto Globe and Mail, she asked the question: *“Why are they doing it?”*

She was puzzled. There was absolutely nothing in any of her assumptions about the WTO to help her understand this show of courage. There was nothing in anything she thought she knew about the WTO to help explain why the supporters of the WTO would be willing to risk personal sacrifice for what must have seemed to her to be merely the widgets that are the usual subjects of global trade negotiations.

Why were so many people from so many countries willing to risk their very lives for the mere chance of concluding something so seemingly mundane as an international trade agreement?

Why are so many talented people in USTR and in the trade ministries and the trade missions of so many other Members of the WTO willing to endure, year after year, “round” after “round,” and decade after decade, all the sleepless nights, all the endless commercial fights, and all the increasingly dangerous flights that are the common and inevitable plight of every international trade negotiator?

And why, after all these years, am I still willing to brave all those imposing piles of trade agreements and legal briefs and panel reports in my office at the WTO — while, outside my window, Swiss police boats bob up and down in the blue waters of the Lake of Geneva?

What *are* the appeals of trade? Why *are* we doing it?

Despite her puzzlement, Ms. Klein suggested a possible answer. Indeed, she suggested an interesting and provocative answer: “Probably for the same reason people have always put their lives on the line for a cause: they believe in a set of rules that promises transcendence.”

As she sees it, the “rigid rules” that inspire the supporters of the WTO are rules that promise “salvation” through trade. In her eyes, the “only god” of the “true believers” in trade “is economic growth,” and the “transcendence” that is promised by trade is the “transcendence” of a “Kamikaze Capitalism.”

Clearly, many of those who oppose the WTO do not see us for who we truly are. So they cannot see why so many of us would be willing to sacrifice for the sake of trade.

We certainly are *not* doing it because we hope to find transcendence through trade. Trade is not transcendence. Trade is only an exchange of goods and services. All the many “things” that are traded in the world every day are, for all their seeming significance, only “things.” Widgets are only widgets.

We do not seek transcendence through trade. We seek something else. We seek something more. We seek what has always been sought by all those who understand the appeals of trade. We seek what has always been sought by every old GATT hand.

The answer to why we are “doing it” is found in what we *are* seeking through trade. And perhaps the best way I can begin to explain what it is that we *are* seeking through trade is by explaining, first, how it was that I first heard and first heeded the appeals of trade long ago, and why it is that I have long wanted nothing more than to be known one day as an old GATT hand.

I was raised in Florida, but I was born in Nashville, Tennessee. Nashville was built on the banks of the Cumberland River. The waters of the Cumberland flow through Middle Tennessee toward the mighty Mississippi, and from there out into all the far waters of the wide world. This may help explain why so many of those who have come from Nashville and from Middle Tennessee to serve our country and our world have, so often, been advocates for trade. Andrew Jackson. Cordell Hull. Albert Gore, Sr. Albert Gore, Jr. Mickey Kantor. All have stood, as I have stood, on the steep banks of the Cumberland. All have watched, as I have watched, the flow of the waters toward the distant seas.

Like my friend Mickey Kantor, I studied at Vanderbilt University in Nashville (although, as I like to remind him, I arrived there as a freshman some years after he was graduated). We both studied history there, at different times, with Professor Charles Delzell, whose father had once run — unsuccessfully — for Congress as a Democrat against Hawley of “Smoot-Hawley” fame. At Vanderbilt, I learned what had happened when the Congress of the United States enacted the “Smoot-Hawley” tariffs and the world turned away from trade during the Great Depression.

I took that lesson back home with me to Florida. Back in Florida, I soon became, at twenty-four, in 1974, the youngest aide to the reform-minded Governor of that state, Reubin Askew. In my increasingly distant youth, I had the great good fortune to serve with Governor Askew, and to help him shape the laws and the ways in which the rapidly-growing trading state of Florida began to venture out commercially for the first time into the wide world.

But it was not until 1979 that I really began to follow the path that would eventually lead me to the Appellate Body of the WTO. By then, Askew had left the Governor’s office in Tallahassee, and he and I had both joined the same up-and-coming Miami law firm. We had been there only a few months when the call came inviting Governor Askew to join President Jimmy Carter’s Cabinet in Washington. I was with Askew at the time in his corner office overlooking Biscayne Bay. I was sitting directly across the desk from him, and I heard several possibilities discussed. I immediately picked up a pen and wrote one word in big bold print on a yellow legal pad on the desk. Then I picked up the legal pad and turned it, at eye level, so that he could see what I had written. The one word on the legal pad was “TRADE.”

No doubt Governor Askew would have made the decision he did even if I had not been so presumptuous as to try to prompt him to do so. His good friend Bob Strauss had just completed several years of work as the chief trade negotiator for the United States in the Tokyo Round, and he had told Askew how much he had enjoyed the job. Ambassador Strauss had recommended Askew to the President as his successor, and the Governor did not really need my bold word of encouragement on my legal pad.

All the same, I remain, after all these years, glad that I wrote that one word. And I will remain forever grateful for having had the experience of working with Askew at what the trading world today universally calls “USTR.” The day I walked into USTR — the Office of the United States Trade Representative — was the day I was introduced to the “General Agreement on Tariffs and Trade.” Someone handed me a tattered copy of the GATT, and said, “Here. Read this.” So I did. And I have not stopped since. I have not stopped reading about trade, studying about trade, and learning about trade in all the years since. I have never ceased since in my efforts to become an old GATT hand.

From that first day, I rejoiced in my role as an apprentice among all the old GATT hands who worked at USTR. And when they saw that I took the time to read the GATT — when they saw that I seemed to be genuinely interested in the substance of trade and trade law — those old GATT hands took the time to teach me about trade, and about what they always described passionately as “the multilateral trading system.” As a *new* GATT hand, I soon shared their passion. While at USTR, I reveled in all the endless acronyms of trade. MFN. MFA. TRQ. TPM. And so many more. I relished the arcane argot of trade. “Binding.” “Dumping.” “Safeguards.” And something mysterious called “countervail.” But, most of all, I read the law and the lore of the GATT.

In his memoirs, the great historian Edward Gibbon wrote of the breadth and the depth of the youthful studies that led him later to write the many volumes of his timeless classic, The Decline and Fall of the Roman Empire. In one memorable scene, he recalled the fateful day in his boyhood when he first opened the pages of a book on the history of Rome in the library of one of his father’s friends. He wrote, “I was immersed in the passage of the Goths over the Danube when the summons of the dinner-bell reluctantly dragged me from my intellectual feast.”<sup>2</sup>

That was precisely how I felt when I first opened the pages of the GATT. And, during what remained of the Carter Administration, I studied the GATT during every spare moment while I served as the “Special Assistant” to the United States Trade Representative in the Executive Office of the President. The reality was not nearly as lofty as the title, but the work seemed special to me. I had a front row seat at the unfolding drama of “globalization.” I had a license to learn all I could about the complex and ever-changing “political economy” of world trade. I was immersed in the passage of the world into a new *world* economy. Then Ronald Reagan became President. And I was dragged reluctantly from my “intellectual feast” at USTR when the new President politely asked all of us who were Democrats to go back home.

Ten years later, my neighbors back home in Central Florida elected me to the first of my two terms in the Congress of the United States. I was the first Democrat in the history of the South elected to an open Congressional seat from a district where Republicans outnumbered Democrats. Later, I was re-elected. All the same, when I first became a member of the Democratic Caucus in the House of Representatives in 1991, I was merely another freshman. So I was surprised when, soon after I arrived, I received a summons to an audience with the then Chairman of the House Ways and Means Committee, Dan Rostenkowski of Illinois.

Several decades of seniority had given Chairman Rostenkowski a private “hideaway” office on a quiet hallway in a corner of the Capitol rarely frequented by the daily throngs of tourists. The room was dark when I entered. I stood at one end of a long table. He sat at the other end. A low lamp at his shoulder cast the only light in the room. “Rosty” was reading by the lamp’s light when I came in. He was bulky, burly,

bespectacled. He was just as he looked in the newspapers. He continued to read for a minute or so, and then he removed his glasses and looked up from his reading.

He asked, “You’re from Florida?” “Yes, Mr. Chairman.” He continued, “I understand you’ve *actually read* the GATT?” “Yes, Mr. Chairman.” “Well, then,” he replied, “you’re on the trade whip team. Thanks for stopping by.” Then he put on his glasses, and returned to his reading.

Evidently, having *actually read* the GATT, I qualified as what passed for a “trade expert” in the rowdy ranks of the House. However, expertise of any kind is worthless in the Congress unless it can help attract and accumulate votes. There are 435 members of the United States House of Representatives. Some have more seniority and, thus, bigger and better offices, than others. But, in the end, on the floor, all their votes count the same. A majority of the votes in the House is needed to pass a bill and, thus, help make a law. And, therefore, one of the highest accolades that one member of the House can accord to another as a lawmaker is to say, “He knows how to get 218 votes.”

The sole purpose of the bipartisan trade whip team in the House was to “whip” up the needed support to get “218 votes” on the trade issues that came before the House. Emboldened by Rosty’s show of confidence, I set out to employ my supposed “expertise” to help get those “218 votes” in a series of legislative struggles over trade. First came the successful vote to secure the “fast-track” negotiating authority that would enable then President George Bush to conclude international trade agreements with America’s trading partners. Later came the successful vote for extending “most-favoured-nation” trading status for the People’s Republic of China. Then came the endlessly controversial — but ultimately successful — vote to approve the “NAFTA” — the North American Free Trade Agreement with Canada and Mexico. In working on these and other proposals for trade legislation, I learned a lot in the years that followed about how to get “218 votes.”

The very last vote I cast as a Member of the Congress was a vote for the implementing legislation that constituted approval by the United States of the Uruguay Round trade agreements that, among many other achievements, established the World Trade Organization as the global successor to the GATT. I was one of the original co-sponsors of the legislation in the House. I cast that vote on November 29, 1994 — my wife Rebecca’s birthday — and then walked out of the House chambers alone into the night. I have not returned to the floor of the House since.

I had decided — for family reasons — not to seek election to a third term in the House. My decision to leave the Congress was probably made the weekend I came home from Washington and tried to sneak a quick glimpse of my daughter, Jamey, who was then three years old, before leaving almost immediately to return to work. When I opened the door to her nursery, Jamey was wide awake, and standing in her crib.

“Mommy, Mommy,” she cried, “Jim Bacchus is here.” This made everyone laugh but me. Jim Bacchus was not “Daddy” to his only daughter. I had missed five of Rebecca’s birthdays in a row, not to mention my children’s birthdays and many other important family occasions. As I walked out of the House chambers for the last time following my vote for the WTO, I hoped that this additional missed birthday would be the last.

The vote on the Uruguay Round legislation had occurred in a “lame duck” Congressional session only a few weeks before my term ended. Back in Florida a few weeks later, I wondered where life would lead me next. I knew that my decision to leave the Congress was the right one for both me and my family, and yet I still wanted very much to serve. So, when that other watcher of the waters of the Cumberland, USTR Mickey Kantor, called me in Florida to ask if I would allow my name to be placed in nomination by my country for appointment by the Members of the WTO to the new Appellate Body of the WTO, I did not need to be prompted by boldface print on a legal pad. I said “Yes.”

So it was that, only a few weeks after leaving the Congress, I was nominated for the Appellate Body of the World Trade Organization by the President of the United States with the bipartisan support of the leadership of both chambers and also of the committees with jurisdiction over trade issues in both the Senate and the House. The only question that remained was: having been nominated by the United States of America, would I be appointed by the Members of the WTO?

Thirty-five people in the world had been nominated for the Appellate Body. Only two were Americans. Only seven would be appointed. Early in 1995, all thirty-five of us made the pilgrimage to Geneva from the far reaches of the planet to participate in the selection process that had been established by the WTO.

The selection committee consisted of the ranking ambassadors on the leading councils of the WTO. In my “interview,” the committee members were considerably more probing about my knowledge of trade, and about my knowledge of trade law, than Rosty had been when I had first arrived in the Congress. But, like Rosty, the GATT hands on the selection committee in Geneva seemed surprised — and pleased — that a former Member of the Congress of the United States had *actually read* the GATT — not to mention GATT case law and the numerous other WTO “covered agreements.”

Moreover, I was equally surprised myself when, as I started to discuss some of my background, an ambassador from an Asian country stopped me by saying, “That’s all right, Mr. Bacchus. I know all about your background and your voting record. I own a time-share in a condominium in Vero Beach, and I’ve followed your Congressional career closely.”

Vero Beach is in Indian River County in my former Congressional district. The last time my name appeared on a ballot, I received one of the highest percentages of the vote of any Democrat in the modern history of Indian River County — forty-two percent. The Asian ambassador knew of the unpopularity among many in Indian River County of my support for foreign aid, for the United Nations, and for many other international pursuits. He knew, too, about the time when a sweet little old lady who was a follower of Ross Perot had attacked me with her hand-held sign opposing the NAFTA. “Don’t you care,” she had yelled, “about the future of your children?”

Following my “interview” in Geneva, I went home to Florida, and waited. Then I waited some more. Eventually a call came from Washington. The ranking American at the WTO — Deputy Director General Warren Lavorel — had been away from Geneva when I had been there for my “interview.” He was going to be in Washington and up on Capitol Hill the next day. He wanted to meet with me then. Would I fly up to meet with him?

I flew up to Washington the next day. Warren was one of the old GATT hands I had known years before as a young “Special Assistant” at USTR. At the time, he had been a senior negotiator in the USTR mission in Geneva. But I had not seen him since. He had been in Geneva all the while I was in the Congress, and now he had gone “across the street” from USTR to work for the new WTO.

Warren and I met in an anteroom of one of the big hearing rooms on the Hill. There were just the two of us. The meeting lasted for less than five minutes. He told me how nice it was to see me again after fifteen years. We exchanged a few reminiscences. We swapped a few other pleasantries. Then, rising from his chair, he thanked me for coming. That was it. As I flew home to Florida later that day, I wondered why he had wanted to meet with me.

Years later, I found out. It seems that my “interview” in Geneva had gone well. I had become a leading candidate for appointment to the Appellate Body. The only remaining question about my candidacy was unrelated to my legal or other qualifications. The only remaining question was my *age*. Appointments to international tribunals ordinarily are accorded only to the most senior of international jurists. The other leading candidates for appointment to the new international tribunal for trade were literally decades older than the American from Florida. Was I, at age 45, old enough? Was I enough of an *old* GATT hand?

Warren had been assured by his fellow Americans that I was old enough. But he remembered me from my youthful days at USTR. He had not seen me in all the intervening years. Thus, the sole purpose of our brief exchange of pleasantries in Washington was, I was later told, so that Warren could confirm that the years had aged me enough that I had *at least some gray hair*. Fortunately, my time in the Congress —

and a few close calls with sweet little old ladies waving anti-NAFTA signs — had taken care of that. Warren returned to Geneva satisfied that I had, indeed, grayed sufficiently to serve on the Appellate Body.

Evidently, the Members of the WTO also concluded that I was old enough. For, a few months later, on November 29, 1995 — one year to the day after the Congressional vote for the legislation implementing the Uruguay Round trade agreements — and, once again, on Rebecca’s birthday — the WTO announced my appointment as one of the seven founding members of the Appellate Body. My longtime friend Andy Stoler, then at USTR and later the Deputy Director-General of the WTO, called to tell me the news of my appointment. He said, “Tell Rebecca ‘Happy Birthday.’ ”

A few weeks later, Rebecca and I flew to Geneva, where I was “sworn in” on a sunny December morning by the WTO’s first Director General, Renato Ruggiero, from Italy. Later that same day, I sat, for the first time, with the six wise men who had been selected to serve with me as founding Members of the world’s brand new, standing tribunal for resolving international trade disputes. The seven of us assembled, for the first time, in “Room F” on the third floor of the WTO. Room F has since been named “Salle Julio Lacarte” in honor of one of those six wise men, the legendary Uruguayan jurist and diplomat who is the oldest — and the wisest — of all the old GATT hands. At the time, I was — by sixteen years — the youngest Member of the new Appellate Body.

Eight years later, I am the only remaining original Member of the Appellate Body. The six wise men who first served alongside me in Geneva are no longer there. Today, I serve with six more. Present at the creation, I am present still. There is no other Member of the Appellate Body, nor even any member of our hard-working Appellate Body Secretariat, who has been there nearly as long as I have. Today, I remain the youngest Member of the Appellate Body, but my hair grows ever grayer, and ever whiter, with every passing day.

When I first left for Geneva, Amy Porges, a GATT hand and a good friend from my days at USTR, gave me, as a thoughtful “going-away” gift, a little light reading: a copy of the “Analytical Index” of GATT law that she had helped prepare during her time in Geneva. Eight years on, that “Analytical Index” still sits nearby on my desk. But now there is much more to all I need to know about the WTO. Now there is much more to the law of the WTO trading system than the GATT *acquis* that is summarized in that Index.

Eight years after the creation of the WTO, there are, altogether, about 30,000 pages of rules and concessions in the GATT 1994 and in all the other “covered agreements” of the WTO. There are also — at last count — more than 13,000 pages of reports from WTO dispute settlement. Many of those pages contain the rulings and the recommendations made by the Appellate Body in nearly sixty reports resulting from a

vast range of complex appeals that have consumed nearly a decade of my life. As some here today may have noticed, we added another hundred or so pages to this ever-increasing tally just the other day.

One of the most eminent of all the old GATT hands, Professor John Jackson, of Georgetown University, has described the opinions of the Appellate Body as “an amazing group of reports.”<sup>3</sup> Some seem to find them more “amazing” than others. But there can be no denying the growing significance of WTO reports to an ever-growing multilateral trading system that — at last count — affects the lives and the livelihoods of five billion people in 145 countries and other customs territories that account for ninety-five percent of the world economy.

Today, all the world seems to have an opinion on the opinions of the Appellate Body. This is as it should be. Even as politics is too important to be left to the politicians, so too is trade too important to be left entirely to the trade diplomats, the trade lawyers, and all the other old GATT hands. The WTO must work for *all* the world. The WTO trading system must truly serve *all* of those five billion people.

But to serve them all well, to serve them all best, all of us who serve the WTO and support the WTO must do a much better job of explaining exactly how our world of widgets serves the wider world of all our many other urgent global concerns. We must do a much better job today, and in the days to come, of answering the question: “*Why are they doing it?*”

The answer to this question — the reason why I first responded years ago to the appeals of trade — the reason why I have strived for so long to become an old GATT hand — is not found in the text of the GATT itself. The answer to why we are “doing it” is not found in the pristine prose of “Article XIII,” in the subtle syntax of “Ad Article III,” or in the long rows of numbers in the long lists of schedules of tariff and other trade concessions that can glaze the gaze of even the oldest GATT hand.

As much as I am committed to every single page of the GATT, it must be admitted: there is very little poetry in the pages of the GATT. The thirty-eight articles of the GATT, the handful of annexes to the GATT, and even the other, newer “covered agreements” that, along with the GATT, are part of the overall WTO treaty, contain few ringing phrases for the ages. This may be one reason why so few have actually read it.

No, the answer is not in the text of the GATT itself. The answer, instead, is in what the GATT stands for. The answer is in what we “quasi-judges” of the WTO might call the “object and purpose” of the rule-based multilateral trading system that is served by the WTO. It is in the way that all old GATT hands see the relationship that *does exist* between trade and transcendence.

As a Christmas gift, Rebecca gave me, for my very own, the two thick, shiny new volumes of the long-awaited Fifth Edition of the Shorter Oxford English Dictionary. It has been suggested by some that those of us on the Appellate Body think of the Shorter OED as tantamount to one of the “covered agreements.” This is not so. Yet we *do* work with words on the Appellate Body. We *do* try always to discern the meaning of words. The meaning of words is discerned in how they are defined. And the words of the English language are nowhere better defined, in my view, than in the OED. (The new edition of the Shorter OED even includes the word “Klingon” — in reference to the bellicose alien species of the “Star Trek” television series. At last glance, the Klingon Empire was not yet a Member of the WTO. But who knows what the future holds?)

My shiny new copy of the Shorter OED defines “transcendence” as “the action or fact of transcending; the condition or quality of being transcendent.” It defines “transcendent” as something “that transcends, surpassing or excelling others of its kind, supreme; beyond the range or grasp of human experience, reason, belief, etc.”<sup>4</sup> One example given for “transcendent” is: “In Kantian philosophy, something *not realizable in experience.*”<sup>5</sup>

To me, this dictionary definition of “transcendence” evokes images of Plato holding forth on the “forms” beneath the ancient porticos in Athens, of Augustine bending in an ascending prayer in the early churches in Hippo, of Emerson musing on the immanence of nature beneath his beloved apple trees in Concord, or of Kant himself contemplating the “oughts” of the “categorical imperative” during his daily afternoon stroll through the streets of Königsberg.

When viewed from the everyday, workaday world of the WTO, these images of “transcendence” may seem a bit much to many old GATT hands — not to mention this former Member of Congress. Kant does not stroll through the pages of the GATT. The word “transcendence” does not appear in the “covered agreements.” Our world of widgets in the WTO is *not* a world of human “transcendence.” It is a world of human experience. It is a world that most definitely *is* “realizable in experience.”

The world that concerns all of us who are privileged to serve the Members of the WTO is, as my distinguished former colleague on the Appellate Body, Florentino Feliciano, of the Philippines, has been known to express it, “a real world in which people live and work and die.” It is a real world of hard facts. It is a real world in which real people try to put bread on the table, put their kids through school, and put — and keep — hope for the future in their hearts. It is a real world in which the many gains that are made from trade make a real difference in improving real lives.

The gains from trade can be seen throughout the history of the human experience with trade. The evidence is in every economics textbook. The division of labor that is derived from the human exchange of trade is a division that multiplies human

productivity and, thus, human prosperity, and, thus, human opportunity. The *international* division of labor that results from *international* trade is only the natural extension of the ever-extending arm of human opportunity in hope for the future.

The “*invisible hand*” of Adam Smith is served by the outstretched hand of the GATT. So is the economic logic of “comparative advantage” advanced by Smith’s handy follower, David Ricardo. Between the lines of the GATT is the belief that by lowering the barriers to worldwide trade we are lifting Smith’s “invisible hand” to help make more worldwide prosperity. Between the lines, too, is the belief that we will all be more prosperous — that the world will work best — if we all do what we all *do best* when compared with others, consistent with our relative, “comparative advantage.”

Yet, the “*visible hand*” of government can likewise work together with the hand of the GATT. Effective and responsive democratic governance is not only *compatible* with the GATT; it is *indispensable* to the ultimate success of the GATT, and of the WTO. Opponents of the WTO frequently accuse supporters of the WTO of “market fundamentalism.”<sup>6</sup> They accuse us of allegiance only to the market — only to an absolutely *laissez-faire* economics. Yet there is absolutely nothing in the WTO Treaty that in any way requires any Member of the WTO to pledge allegiance to *laissez-faire*. And I have never known anyone in any way associated with the WTO who would.

I, for one, would never raise my GATT hand in such a salute. I am neither a socialist nor a Social Darwinist. I am that stubborn variety of American known as a “Florida Democrat.” I have voted — when they have let me vote — for the market. I have also voted for public education, public investment, reasonable regulation, and a strong social safety net. If you doubt me, go read the Congressional Record. Or, better yet, go ask any Republican in Indian River County.

I have also voted for trade. I have voted for trade, I have heeded the appeals of trade, I have followed in the footsteps of the old GATT hands of trade, for the one compelling reason that explains the one all-embracing “object and purpose” of trade: *because trade makes more choices possible*. Trade makes more choices possible for a lot more people in a world in which far too many people have far too few real choices. And, by making more choices possible for more people in our all too real world, trade also makes possible *more real freedom*.

GATT hands tend to the real world. GATT hands are practical. GATT hands are as mundane as the mundane prose of the GATT itself. We are realists. But, the real truth of who we truly are is this. We realists of trade are also idealists. The real world of trade is a world that serves an ideal. This ideal is trade’s real appeal. This ideal is *freedom*.

The ideal of freedom is the ideal of every GATT hand. Trade is not the end we seek. Trade is not an end at all. Trade is a *means* to an end. Trade is a means to all the many ends of human freedom. In lowering the barriers to trade, we are serving the ends of freedom. In lowering the barriers to trade, we are raising the hopes of all humanity for having and living in freedom.

The struggle in the world today is a struggle *for* freedom. It is *not* a struggle *between* civilizations. It is a struggle *within* civilizations *between* those who believe in freedom and those who do not. It is a struggle *within* every country, *within* every culture, and *within* every civilization *between* those who believe in *closed* societies in which people are *told* how to live, and those who believe in *free and open* societies in which people are free to *choose* how to live.<sup>7</sup>

The struggle for freedom is a struggle of *ideas*. It is a struggle that can only be won by the power of an idea. As another of the six wise men who first served with me on the Appellate Body, Said El-Naggar, of Egypt, has said, “History tells us you cannot kill an idea by repression. Ideas have to be killed by ideas.”<sup>8</sup> All the ideas that imprison the minds of so many in all the closed societies of the world can only be defeated by the idea of freedom that is the *very essence* of a free and open society.

My dear friend Said, now in his eighties, has devoted his entire life to the struggle to create free and open societies in the world. In his retirement from the Appellate Body, he is back in Egypt, and still engaged in the struggle for freedom. In his youth, he learned about freedom as a student of that great philosopher of freedom, Karl Popper. Popper taught Said — he taught us all — that a free and open society is one in which individuals are free to make their own choices. Freedom is about choosing. Freedom is about making personal decisions about how best to live. The more personal decisions we make, the freer we are. And the more choices we have, the more personal decisions we can make.

What we seek *through trade* is the opportunity for more people to have more choices so they will be free to make more personal decisions in free and open societies. What we seek through the *rules of trade* is the assurance that the five billion people who are served by the WTO will have the full benefit of all the choices of trade that the Members of the WTO have chosen to include in the WTO Treaty.

It is true that those of us who support the WTO believe in a “set of rules.” We believe in a “set of rules” because we believe in the rule of law. The rules we follow in establishing the rule of law in trade are rules on which all the Members of the WTO have *voluntarily* agreed. They are rules for trade that are — by their own *voluntary* agreement — binding on all WTO Members. They are rules for making binding trade concessions, rules for preventing trade discrimination, rules for countering unfair trade practices, rules for permitting certain environmental and other measures that affect trade, and rules for

resolving disputes when there are the inevitable international disagreements about the meanings of the rules of trade. The “set of rules” in which we believe establishes an agreed international framework for securing the many benefits of all our existing agreements on trade, and for concluding new agreements that will reduce the remaining barriers to trade.

We are “true believers” in these rules of trade, because we believe these rules of trade are essential to the ends of freedom. We are “true believers” in upholding these rules of trade by upholding the rule of law, because we believe the rule of law is essential to the ends of freedom.

Our long historical experience with trade, our half-century of experience with the GATT, and our experience thus far with the WTO, all tell us that we have more choices when we have more trade, and that we have more assurance of having the benefit of those choices when we have more adherence to agreed trade rules in a multilateral trading system. By creating more choices, trade creates more freedom. And, by assuring the availability of the benefit of the additional choices that trade creates, the multilateral trading system that is served by the WTO fulfills an essential role in the struggle for freedom within all the civilizations of the world.

No, trade is *not* transcendence. But, because trade provides more choices, because trade permits more personal decisions, because trade creates more freedom, each of us, in every part of the world, can have, *through more trade*, more of all the freedom we each need as individuals to find our own way to transcendence. This is the ultimate end of trade, because this is the ultimate end — this is the ultimate purpose — of human freedom. This is the real relationship between trade and transcendence.

The struggle for freedom is unending. In this struggle, there are always those who fear freedom. And, thus, there are always those who fear the additional choices that are made possible by trade. In one of the early chapters of his epic history of Rome, Gibbon described the annual voyage of a huge Roman fleet to bring back to the Romans the silks, perfumes, and precious stones of India. In a foreshadowing of many such debates to come, some of the Romans feared the loss of the silver they exported to India in exchange for these imports. Gibbon — who served for a time on the British board of trade — concluded that, despite these fears, the supply of silver in Rome actually increased during the course of this trade. It was not trade that caused the decline and fall of the Roman Empire.<sup>9</sup>

In all the centuries since, variations of this ancient story have been repeated many times and in many places. But, in every time, and in every place, the ends of human freedom have always been served best by creating more choices by creating more trade. In creating more trade, we create more freedom to choose from all the many ways of life in all its many marvelous manifestations. In furthering trade, we further the flow of

freedom into all the waters of the wide world. And further freedom we must. For, as Gibbon said in the memoirs he wrote while gazing out on the snow-covered peaks of the Alps from his hillside villa overlooking the Lake of Geneva, “Freedom is the first wish of our hearts; freedom is the first blessing of our nature....”<sup>10</sup>

Those who would have us turn away from trade would have us turn away from freedom. They would have us turn away from the wide world. They fear to go where the waters flow. But those of us who understand the appeals of trade have no such fears. We do not *fear* freedom. We *choose* freedom. We *choose* freedom because we believe we are each capable as individuals of making the *right* choices among all the many choices that freedom makes possible. We believe we are each capable of *being free*.

Not too long ago, I returned to Nashville to speak at Vanderbilt University Law School. Afterwards, I was approached by a bright young law student from China. He told me about the choice he had made. He told me he was studying trade law because he wanted to return to China to work for freedom and democracy. He told me he believed he could best work for freedom and democracy in China by working for freer trade between China and the rest of the world. As he turned to go, he told me, too, “I enjoyed listening to you. I learn by listening to an old GATT hand.”

As I prepare to turn to go from the WTO, as I approach the end of my allotted eight years on the Appellate Body, I think more and more about all I have learned about all it means to be an old GATT hand. And, as I begin to consider the personal choices I will soon have to make about how best to use my own newfound freedom in my own future, I consider also the future of the still new institution I will leave behind me when I leave the Appellate Body and leave Geneva at yearend.

Like all human institutions, the WTO has human imperfections. Like all efforts to serve human freedom, the WTO is much in need of more and better efforts by all of us who try our very best to serve freedom by serving the cause of trade. On some other day, I will have more to say about what I believe some of those efforts should be. On some other day, I will have a lot more to say.

Today, I will leave you with just this from an old GATT hand who looks forward to getting a lot older, and who looks forward also to finding new ways in the future to continue to serve the cause of trade: “*Why are they doing it?*” We are doing it to free all of humanity. The appeals of trade are the appeals of humanity. The hand of the GATT is the hand of freedom.

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James Bacchus is the Chairman of the Appellate Body of the World Trade Organization in Geneva, Switzerland. He is the youngest Member, the longest serving Member, the only North American Member, and the only remaining original Member of the global tribunal, which hears final appeals in international trade disputes involving the 95 percent of world commerce conducted by the 145 countries and other customs territories that are Members of the WTO. Bacchus is a former Special Assistant to the United States Trade Representative in the Executive Office of the President. He is also a former member of the Congress of the United States, from Florida. He served two terms in the U.S. House of Representatives before choosing not to seek re-election in 1994. In 1995, he was appointed by the Members of the WTO to the Appellate Body. Bacchus received a Bachelor of Arts degree from Vanderbilt University, Magna Cum Laude and Phi Beta Kappa, with High Honors in History. He received a Master of Arts degree from Yale University, where he was a Woodrow Wilson Fellow in History. He was graduated with High Honors from the Florida State University College of Law, where he was Editor-in-Chief of the FSU Law Review. These are his personal views, and are not the views of his colleagues on the Appellate Body or the official views of the WTO.

## Notes

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- <sup>1</sup> Naomi Klein, “Kamikaze Capitalists,” Toronto Globe and Mail (November 7, 2001), reprinted in Naomi Klein, Fences and Windows: Dispatches from the Front Lines of the Globalization Debate (New York: Picador, 2002), 176. The quotes from Klein are all from this article.
- <sup>2</sup> Edward Gibbon, Memoirs of My Life (London: Penguin Books, 1990), 72 [1796].
- <sup>3</sup> John Jackson, “Perceptions about the WTO Trade Institutions,” World Trade Review, Volume 1, Number 1, 101, 110.
- <sup>4</sup> Shorter Oxford English Dictionary, 5<sup>th</sup> Edition (Oxford: Oxford University Press, 2002) (“Shorter OED”).
- <sup>5</sup> Emphasis added.
- <sup>6</sup> Naomi Klein is one who used this phrase, for example. *See* Klein, Fences and Windows, at 243.
- <sup>7</sup> In this paragraph and in those that follow, I am, of course, using the familiar terms that Karl Popper first used in his classic work, The Open Society and Its Enemies (1945).
- <sup>8</sup> Quoted in Caryle Murphy, Passion for Islam: Shaping the Modern Middle East: The Egyptian Experience (New York: Scribner’s, 2003), 146.
- <sup>9</sup> Edward Gibbon, The Decline and Fall of the Roman Empire, abridged version (London: Penguin Classics, 1988), Chapter 2, 79-80 [1776].
- <sup>10</sup> Gibbon, Memoirs of My Life, at 74.